United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2246 793

No. 17, SPECIAL CALENDAR.

JOHN C. DAVIS, APPELLANT,

vs.

UNITED STATES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 7, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2246.

No. 17, SPECIAL CALENDAR.

JOHN C. DAVIS, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 29, 1910.

In the Court of Appeals of the District of Columbia.

No. 2246.

JOHN C. DAVIS, Appellant,
vs.
UNITED STATES.

a Supreme Court of the District of Columbia.

No. 26689. Criminal.

UNITED STATES
vs.
JOHN C. DAVIS.

and

No. 26690. Criminal.

UNITED STATES
vs.
JOHN C. DAVIS.

Consolidated.

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled causes, to wit:

1 *Indictment.*

Filed in Open Court Oct. 4, 1909. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

April Term, A. D. 1909.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That on the third day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, one John C. Davis, late of the District aforesaid, unlawfully, knowingly, designedly and with intent to defraud, did falsely pretend and represent to one Nellie McKeown that a certain Thomas A. Owen was then engaged in the business of contracting and building in the city of Washington, in the District aforesaid, and that in the conduct of said business he, the said Thomas A. Owen, was then constructing an apartment house in the said city; that for the purpose of constructing said apartment house a large quantity of lumber was needed by him, the said Thomas A. Owen; that the lumber so needed could then be purchased by him, the said Thomas A. Owen, in the state of Virginia at much lower prices than in the District of Columbia aforesaid, but that to so obtain said lumber at the lower prices aforesaid it was necessary that the same should be paid for with cash at the time of its purchase by him, the said Thomas A.
2 Owen; that he, the said Thomas A. Owen, was desirous of so purchasing said lumber in the state of Virginia to be used in the construction of said apartment house; and that he, the said Thomas A. Owen, had theretofore entered into a contract with him, the said John C. Davis, whereby he, the said John C. Davis, should procure the money necessary to purchase the said lumber in the manner and for the purpose aforesaid; that by reason of the low prices at which said lumber was to be so purchased, as well as by reason of the terms of said contract, persons who would invest money with him, the said John C. Davis, for the purpose of purchasing said lumber in the manner aforesaid, would receive large profits upon their said investment.

By color and means of which false pretenses and representations aforesaid, the said John C. Davis did then and there unlawfully, knowingly, designedly and with intent to defraud, obtain from the said Nellie McKeown a certain instrument of writing in the form of a bank check, of the tenor following, that is to say:

CIN'TI, OHIO,

"No. —. [WASHINGTON, D. C.,]* *March 3d,* 1909.

Fifth—Third National Bank.

Pay to the order of W. E. Sisson Five hundred 100 Dollars $500.00.

N. McKEOWN."

and which said instrument of writing was then and there the property of the said Nellie McKeown and of the value of five hundred dollars, and which said instrument of writing the said Nellie McKeown, relying upon the false pretenses and representations aforesaid, which she believed to be true, and being deceived
3 thereby, did then and there deliver to him the said John C. Davis.

[* Words enclosed in brackets erased in copy.]

Whereas, in truth and in fact, the said Thomas A. Owen was not then or at any other time engaged in the business of contracting and building in the said city of Washington; nor was he, the said Thomas A. Owen, then or at any other time constructing an apartment house in said city; nor did he, the said Thomas A. Owen, then need a large quantity of lumber for the purpose of constructing an apartment house in said city; nor was he, the said Thomas A. Owen, then desirous of purchasing lumber in the state of Virginia to be used in the building of an apartment house in the said city; nor had he, the said Thomas A. Owen, theretofore entered into a contract with him the said John C. Davis whereby he, the said John C. Davis, was to procure money necessary to purchase lumber in the state of Virginia for the building of an apartment house in the said city by the said Thomas A. Owen; nor was there then any existing contract, terms or conditions between the said Thomas A. Owen and the said John C. Davis whereby persons investing money with the said John C. Davis for the purpose of purchasing lumber in the state of Virginia, in the manner and for the purpose aforesaid, would receive large profits or any profits whatever upon their said investments; as he, the said John C. Davis, at the time of the making by him as aforesaid of the false pretenses and representations aforesaid then and there well knew; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

4 Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present.

That on the sixth day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, the said John C. Davis, unlawfully, knowingly, designedly and with intent to defraud, did falsely pretend and represent to the said Nellie McKeown that the said Thomas A. Owen was then engaged in the business of contracting and building in the city of Washington, in the District aforesaid, and that in the conduct of said business he, the said Thomas A. Owen, was then constructing an apartment house in the said city; that for the purpose of constructing said apartment house a large quantity of lumber was needed by him, the said Thomas A. Owens; that the lumber so needed could then be purchased by him, the said Thomas A. Owen, in the state of Virginia at much lower prices than in the District of Columbia aforesaid, but that to so obtain said lumber at the lower prices aforesaid it was necessary that the same should be paid for with cash at the time of its purchase by him, the said Thomas A. Owen; that he, the said Thomas A. Owen, was desirous of so purchasing said lumber in the state of Virginia to be used in the construction of said apartment house; and that he, the said Thomas A. Owen, had theretofore entered into a contract with him, the said John C. Davis, whereby he, the said John C. Davis, should procure the money necessary to purchase the said lumber in the manner and for the purpose aforesaid;

that the sum of five hundred dollars theretofore received by
5 him the said John C. Davis from her the said Nellie McKeown had in fact been invested in the purchase of lumber in the state of Virginia for use in the construction of said apartment house in said city, and that he, the said John C. Davis, had procured from the said Thomas A. Owen a deed of trust on said apartment house securing the repayment to the said Nellie McKeown of the sum of two thousand dollars; that he, the said John C. Davis, had caused the said deed of trust to be duly recorded in the office of the Recorder of Deeds of the District of Columbia aforesaid.

By color and means of which false pretenses and representations last aforesaid, the said John C. Davis did then and there, that is to say, on the said sixth day of March in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, unlawfully, knowingly, designedly and with intent to defraud, obtain from the said Nellie McKeown three certain other instruments of writing, each in the form of a bank check, and the property of the said Nellie McKeown, one of said instruments of writing then and there being of the value of one thousand dollars, and of the tenor following, that is to say:

CINCINNATI, OHIO,
"No. —. [WASHINGTON, D. C.,]* *March 6th,* 1909.

[The Riggs National Bank
Formerly Riggs & Co.]*
Third—Fifth National Bank, Cinti., O.

Pay to the order of Wade H. Atkinson One thousand Dollars $1,000.00.

N. McKEOWN."

and another of the said instruments in writing then and there being of the value of four hundred dollars, and of the tenor fol-
6 ing, that is to say:

CINCINNATI, OHIO,
"No. —. [WASHINGTON, D. C.,]* *March* 6, 1909.

Third—Fifth National Bank
The [National Bank of Washington
of Washington, D. C.]* Cincinnati, Ohio.

Pay to the order of E. Hilton Jackson Four hundred Dollars, $400.00.

N. McKEOWN."

and another of said instruments of writing then and there being of the value of one hundred dollars, and of the tenor following, that is to say:

[* Word enclosed in brackets erased in copy.]

"No. —. CINCINNATI, OHIO, [WASHINGTON, D. C.,]* *March* 6, 1909.

Fifth—Third
[The Commercial]* National Bank
of [Washington, D. C.]* Cinti. O.

Pay to the order of W. E. Sisson $100.00 One hundred Dollars.
N. McKEOWN."

which three instruments of writing last aforesaid the said Nellie McKeown, relying upon the false pretenses and representations last aforesaid, which she believed to be true, and being deceived thereby, did then and there deliver to him the said John C. Davis.

Whereas, in truth and in fact, the said Thomas A. Owen was not then or at any other time engaged in the business of contracting and building in the said city of Washington; nor was he, the said Thomas A. Owen, then or at any other time constructing an apartment house in said city; nor did he, the said Thomas A.
7 Owen, then need a large quantity of lumber for the purpose of constructing an apartment house in said city; nor was he, the said Thomas A. Owen, then desirous of purchasing lumber in the state of Virginia to be used in the building of an apartment house in the said city; nor had he, the said Thomas A. Owen, theretofore entered into a contract with him, the said John C. Davis, whereby he, the said John C. Davis, was to procure money necessary to purchase lumber in the state of Virginia for the building of an apartment house in the said city by the said Thomas A. Owen; nor had the sum of five hundred dollars, or any sum whatever, theretofore received by him the said John C. Davis from her the said Nellie McKeown in fact been invested in the purchase of lumber in the state of Virginia for use in the construction of said apartment house in said city; nor had he, the said John C. Davis, procured from the said Thomas A. Owen a deed of trust on said apartment house, securing the repayment to the said Nellie McKeown of the sum of two thousand dollars or any sum whatever; nor had he, the said John C. Davis, caused the said deed of trust to be duly recorded in the office of the Recorder of Deeds of the District of Columbia aforesaid; as he, the said John C. Davis, at the time of the making by him as last aforesaid of the false pretenses and representations last aforesaid then and there well knew; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid,
8 do further present:

That the said John C. Davis, on the said third day of March, in the year of our Lord one thousand nine hundred and

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[* Words enclosed in brackets erased in copy.]

nine, and at the District aforesaid, was the agent and attorney of the said Nellie McKeown, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care a certain instrument of writing, that is to say, a certain bank check, of the tenor following, that is to say:

CIN'TI, OHIO,

"No. —. [WASHINGTON, D. C.,]* *March 3d,* 1909.

Fifth—Third National Bank

Pay to the order of W. E. Sisson Five hundred /100 Dollars $500.00.

N. McKEOWN."

which instrument of writing last aforesaid was then and there of the value of five hundred dollars, and the property of the said Nellie McKeown; which instrument of writing last aforesaid had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as aforesaid, and that he, the said John C. Davis, so having the instrument of writing last aforesaid in his possession and under his care as aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the
9 same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Fourth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the said sixth day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Nellie McKeown, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care a certain other instrument of writing, that is to say, a certain other bank check, of the tenor following, that is to say:

CINCINNATI, OHIO,

"No. —. [WASHINGTON, D. C.]* *March 6th,* 1909.

[The Riggs National Bank, Formerly Riggs & Co.]*

Third—Fifth National Bank, Cin'ti, O.

Pay to the order of Wade H. Atkinson One thousand Dollars $1000.00.

N. McKEOWN."

[* Words enclosed in brackets erased in copy.]

which instrument of writing aforesaid was then and there of the value of one thousand dollars, and the property of the said Nellie McKeown; which instrument of writing last aforesaid had come into such possession and under such care of him the said John C.
10 Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the instrument of writing last aforesaid in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Fifth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the said sixth day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Nellie McKeown, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care a certain other instrument of writing, that is to say, a certain other bank check, of the tenor following, that is to say:

CINCINNATI, OHIO,
"No. —. [WASHINGTON, D. C.]* *March* 6, 1909.

Third—Fifth National Bank
The [National Bank of Washington of Washington, D. C.]* Cincinnati, Ohio.

Pay to the order of E. Hilton Jackson Four hundred Dol-
11 lars, $400.00.

N. McKEOWN."

which instrument of writing last aforesaid was then and there of the value of four hundred dollars, and the property of the said Nellie McKeown; which instrument of writing last aforesaid had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the instrument of writing last aforesaid in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and

[* Words enclosed in brackets erased in copy.]

secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Sixth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the said sixth day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Nellie McKeown, and that on the day and year last aforesaid, and
12 at the District aforesaid, he, the said John C. Davis, had in his possession and under his care a certain other instrument of writing, that is to say, a certain other bank check, of the tenor following, that is to say:

CINCINNATI, OHIO,
"No. —. [WASHINGTON, D. C.]* *March* 6, 1909.

Fifth-Third
[The Commercial]* National Bank of [Washington, D. C.,]*
Cin'ti, O.

Pay to the order of W. E. Sisson $100.00 One hundred dollars.
N. McKEOWN."

which instrument of writing last aforesaid was then and there of the value of one hundred dollars, and the property of the said Nellie McKeown; which instrument of writing last aforesaid had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the instrument of writing last aforesaid in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

13 Seventh Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the said third day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Nellie

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[* Words enclosed in brackets erased in copy.]

McKeown, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care five hundred dollars in money of the value of five hundred dollars of the money and property of the said Nellie McKeown, which said five hundred dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis, as last aforesaid, and that he, the said John C. Davis, so having the said five hundred dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Eighth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

14 That the said John C. Davis, on the said sixth day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Nellie McKeown, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care fifteen hundred dollars in money of the value of fifteen hundred dollars of the money and property of the said Nellie McKeown, which said fifteen hundred dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the said fifteen hundred dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

15 (Endorsed:) No. 26689. Crim. United States vs. John C. Davis. False pretenses and embezzlement. Witnesses: Nellie McKeown, William E. Sisson, Wade H. Atkinson, Thomas A. Owens, John A. Eckloff. A true bill. Henry D. Nicholson, Foreman.

16 Supreme Court of the District of Columbia.

FRIDAY, *November 19th, A. D.* 1909.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

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No. 26689.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for Embezzlement and False Pretenses.

Come as well the Attorney of the United States as the defendant, in proper person, in lawful custody; and, thereupon, the defendant being arraigned upon the indictment herein pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

Indictment.

Filed in Open Court Oct. 4, 1909. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1909.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

17 That one John C. Davis, late of the District aforesaid, on the fifteenth day of July, in the year of our Lord one thousand nine hundred and seven, and at the District aforesaid, was the agent and attorney of one Robert Lee Wilkins, and that on the day and year aforesaid and at the District aforesaid, he, the said John C. Davis had in his possession and under his care fifteen hundred dollars in money of the value of fifteen hundred dollars of the money and property of the said Robert Lee Wilkins, which said fifteen hundred dollars had come into such possession and under such care of him the said John C. Davis by virtue of the said employment of him the said John C. Davis, and that he, the said John C. Davis, so having the said fifteen hundred dollars in his possession and under his care as aforesaid, did then and there, and while he was such agent and attorney as aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the sixteenth day of July, in the year of our Lord one thousand nine hundred and seven, and at the District aforesaid, was the agent and attorney of the said
18 Robert Lee Wilkins, and that on the day and year last aforesaid and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care one thousand dollars in money of the value of one thousand dollars of the money and property of the said Robert Lee Wilkins, which said one thousand dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid; and that he, the said John C. Davis, so having the said one thousand dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and seven, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid and at the District aforesaid, he, the said John C. Davis, had in his pos-
19 session and under his care one thousand eight hundred and ninety-three dollars and five cents in money of the value of one thousand eight hundred and ninety-three dollars and five cents of the money and property of the said Robert Lee Wilkins, which said one thousand eight hundred and ninety-three dollars and five cents had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the said one thousand eight hundred and ninety-three dollars and five cents in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Fourth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the ninth day of August, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at
20 the District aforesaid, he, the said John C. Davis, had in his possession and under his care one hundred and fifty dollars in money of the value of one hundred and fifty dollars of the money and property of the said Robert Lee Wilkins, which said one hundred and fifty dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the said one hundred and fifty dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Fifth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the twenty-first day of October, in the year of our Lord one thousand nine hundred and seven, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care two hundred and forty-one dol-
21 lars and twenty-five cents in money of the value of two hundred and forty-one dollars and twenty-five cents of the money and property of the said Robert Lee Wilkins, which said two hundred and forty-one dollars and twenty-five cents had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid, and that he, the said John C. Davis, so having the said two hundred and forty-one dollars and twenty-five cents in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Sixth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the second day of January in the year of our Lord one thousand nine hundred and eight, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care two hundred and fifty dollars in money of the
22 value of two hundred and fifty dollars of the money and property of the said Robert Lee Wilkins, which said two hundred and fifty dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid; and that he, the said John C. Davis, so having the said two hundred and fifty dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Seventh Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the seventeenth day of February, in the year of our Lord one thousand nine hundred and eight, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care six hundred dollars in money of the value of six hundred dollars of the money and property of the said Robert Lee Wilkins, which said six hundred dollars had come into
23 such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid; and that he, the said John C. Davis, so having the said six hundred dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Eighth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the sixth day of April, in the year of our Lord one thousand nine hundred and eight, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care two thousand six hundred and eighty-five dollars in money of the value of two thousand six hundred and eighty-five dollars, of the money and property of the said Robert Lee Wilkins, which said two thousand six hundred and eighty-five dollars had come into such possession and under such care of him
24 the said John C. Davis by virtue of the employment of him the said John C. Davis as last aforesaid; and that he, the said said John C. Davis, so having the said two thousand six hundred and eighty-five dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Ninth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the thirtieth day of October, in the year of our Lord one thousand nine hundred and eight, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care five hundred dollars in money of the value of five hundred dollars of the money and property of the said Robert Lee Wilkins, which said five hundred dollars had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis as
25 last aforesaid; and that he, the said John C. Davis, so having the said five hundred dollars in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided and against the peace and government of the said United States.

Tenth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said John C. Davis, on the first day of March, in the year of our Lord one thousand nine hundred and nine, and at the District aforesaid, was the agent and attorney of the said Robert Lee Wilkins, and that on the day and year last aforesaid, and at the District aforesaid, he, the said John C. Davis, had in his possession and under his care nine thousand seven hundred and one dollars and twenty-five cents in money of the value of nine thousand seven hundred and one dollars and twenty-five cents of the money and property of the said Robert Lee Wilkins, which said nine thousand seven hundred and one dollars and twenty-five cents had come into such possession and under such care of him the said John C. Davis by virtue of the employment of him the said John C. Davis
26 as last aforesaid; and that he, the said John C. Davis, so having the said nine thousand seven hundred and one dollars and twenty-five cents in his possession and under his care as last aforesaid, did then and there, that is to say, on the day and year last aforesaid, and at the District aforesaid, and while he was such agent and attorney as last aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with and secrete the same with intent to convert the same to his own use, and did thereby then and there embezzle the same; against the form of the statute in such case made and provided and against the peace and government of the said United States.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 26690. Crim. United States vs. John C. Davis. Embezzlement. Witnesses: Robert Lee Wilkins, Thomas A. Owen, Peter C. Willson, William E. Sisson. A true bill. Henry D. Nicholson, Foreman.

27 Supreme Court of the District of Columbia.

FRIDAY, *November* 19*th,* A. D. 1909.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

No. 26690.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for Embezzlement.

Come as well the Attorney of the United States as the defendant, in proper person, in lawful custody; and, thereupon, the defendant

being arraigned upon the indictment herein pleads thereto not guilty and for trial puts himself upon the Country and the Attorney of the United States doth the like.

MONDAY, *January 24th, A. D.* 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

No. 26689.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for False Pretenses and Embezzlement.

and

No. 26690.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for Embezzlement.

Come as well the Attorney of the United States as the de-
28 fendant, by his Attorney Henry E. Davis, Esquire; and, thereupon the motion of the United States filed herein to consolidate the above numbered indictments coming on to be heard and being argued by counsel, it is considered by the Court that said motion be and the same hereby is granted; whereupon it is ordered that said indictments be and they hereby are consolidated in accordance with the provisions of section 1024 of the Revised Statutes of the United States.

And, thereupon, on motion of the defendant and for good cause shown, the Court vacates its order passed January 4, 1910, setting case No. 26690 to be tried on January 31, 1910.

WEDNESDAY, *May 18th, A. D.* 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

Nos. 26689 and 90.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for False Pretenses and Embezzlement.

Come again the parties aforesaid, in manner as aforesaid and the jury that was respited yesterday; and thereupon, the Court, upon

motion of the defendant's counsel, withdraws from the further consideration of the jury, the seventh (7th) and eighth (8th) counts of indictment Number 26689; whereupon, the Court, upon motion of the defendant's atorney, requires the Attorney of the United
29 States to elect upon which counts of indictments 26689 and 26690 he will stand for the conviction of the defendant; whereupon the Attorney of the United States elects to stand upon the first (1st) six (6) counts of indictment number 26689 and all the counts of indictment number 26690; whereupon, the jury, after hearing the argument of counsel and the charge of the Court, upon their oath say that the defendant is guilty in manner and form as charged in the first six counts of indictment number 26689 and guilty in manner and form as charged in indictment number 26690; whereupon the defendant is remanded to jail to await the further action of the Court in this case.

Motions for New Trial and in Arrest of Judgment.

Filed May 20, 1910.

In the Supreme Court of the District of Columbia Holding a Criminal Term.

Criminal. No. 26689.

UNITED STATES
vs.
JOHN C. DAVIS.

Comes now the defendant, by his attorney, and moves the court to set aside the verdict and grant a new trial in the above entitled cause upon the following grounds:

1. The verdict is against the evidence.
30 2. The verdict is against the weight of the evidence.
3. The verdict is inconsistent and contradictory.
4. On errors committed by the court during the trial in admitting testimony.
5. On errors committed by the court during the trial in excluding testimony.
6. On exceptions taken by the defendant during the trial.
7. Because the jury by its verdict found the defendant guilty of both obtaining by false pretenses and embezzling the same property as in and by the first six counts of the indictment described.

HENRY E. DAVIS,
Attorney for Defendant.

* * * * * * *

Comes now the defendant, by his attorney, and moves the court to arrest judgment on the verdict in the above entitled cause upon the following grounds:

1. The indictment improperly joins, in respect of the same sub-

jects matter, the charge of obtaining property by false pretenses and the charge of embezzling property.

2. Because the verdict of the jury being upon the two said charges, no judgment can properly be rendered upon the verdict of the jury respecting the same.

HENRY E. DAVIS,
Attorney for Defendant.

31 *Motions for New Trial and in Arrest of Judgment.*

Filed May 20, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26690.

UNITED STATES
vs.
JOHN C. DAVIS.

Comes now the defendant, by his attorney, and moves the court to set aside the verdict and grant a new trial in the above entitled cause upon the following grounds:

1. The verdict is against the evidence.
2. The verdict is against the weight of the evidence.
3. The verdict is inconsistent and contradictory.
4. On errors committed by the court during the trial in admitting testimony.
5. On errors committed by the court during the trial in excluding testimony.
6. On exceptions taken by the defendant during the trial.
7. Because the verdict of the jury is double, in that it found the defendant guilty on the tenth count of the indictment in embezzling the same moneys and property of which it found the defend-

32 ant guilty on the first nine counts of the indictment, or some of them.

HENRY E. DAVIS,
Attorney for Defendant.

* * * * * * *

Comes now the defendant, by his attorney, and moves the court to arrest judgment on the verdict in the above entitled cause upon the following grounds:

1. Because the said verdict is double, in that it finds the defendant guilty on the tenth count of the indictment in respect of the same subjects matter set forth in the preceding nine counts thereof, or some of them.
2. Because the verdict of the jury being thus double no judgment upon the said verdict can properly be rendered.

HENRY E. DAVIS,
Attorney for Defendant.

33 *Opinion of Court on Motion in Arrest of Judgment.*

Filed July 15, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 26689. Criminal Docket.

UNITED STATES
vs.
JOHN C. DAVIS.

The defendant has been convicted upon an indictment in eight counts, a part of which counts charge embezzlement and other counts, relating to some of the same transactions, charge what has been referred to in the argument as the crime of procuring money or checks by false pretenses. It is said that in order to make out the crime of obtaining money by false pretenses it is necessary to show that the title of the true owner was divested and was vested in the defendant, and that consequently the defendant could not after that be guilty of embezzlement of the same money because in the crime of embezzlement the money remains the money of the true owner until it is converted by the embezzler. The jury having found the defendant guilty under both classes of counts, it is said the verdict is too inconsistent to be allowed to stand. It is said, as to the same money, the jury has found, first, that it had become the money of defendant by reason of his false pretenses, and, second, that after that event it was still the money of the original owner and as such converted by
34 Davis to his own use, or in other words embezzled. If this be a true statement of the situation it is difficult to see why the judgment should not be arrested. Judgment could hardly be rendered upon the false pretenses counts for the reason that the verdict under the embezzlement counts negatives one essential fact in the crime of procuring money by false pretenses, namely, the divesting of the title originally, and judgment could hardly be rendered under the embezzlement counts because one essential fact in the crime of embezzlement is negatived by the verdict under the counts for false pretenses, namely, that the money converted was the money of the original owner at the time of the conversion. It becomes necessary therefore to examine critically the counts which have been referred to as counts for obtaining money under false pretenses in order to see what these counts really do charge. When those counts are thus critically examined it appears that they are not ordinary counts for obtaining money under false pretenses, but set up that the defendant by various false pretenses therein set forth obtained possession of the money or checks of Miss McKeown, not as and for his money, nor to be used as his own money, but to be held and used by him as her agent, in her interest, and for her benefit. That is all those counts charge with respect to the point we are considering. All the facts thus charged are perfectly consistent with the verdict finding that the

defendant after he had received this money as Miss McKeown's agent, still held it as hers and embezzled it. The verdict cannot be taken as establishing anything except what is alleged. It cannot
35 be supposed that the jury were required to find, under the false pretense- counts, any divesting of the title. The presumption is that they were instructed that the defendant would be guilty under those counts if he did exactly what, and no more than, the counts charged, and it may not be improper to add that they were in fact so instructed. The question then arises whether the counts spoken of as for obtaining money or other property by false pretenses charge any offense known to the law. The government's counsel now admits that they do not and in this proposition the court agrees. Accordingly judgment will be arrested upon these counts and will be rendered only upon the counts charging embezzlement.

The general motion in arrest of judgment is therefore overruled.

WENDELL P. STAFFORD, *Justice.*

Opinion of Court Upon Motion for New Trial.

Filed July 15, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 26689. Criminal Docket.

UNITED STATES
vs.
JOHN C. DAVIS.

In support of this motion the defendant urges the same mat-
36 ters which have been dealt with in disposing of the defendant's motion in arrest or judgment. It is not true that the case was submitted to the jury in any such way as to permit the jury to find inconsistent and contradictory verdicts. The jury were told that the defendant should be convicted under the so-called false pretenses counts if the matters therein set forth were established, which matters of fact did not include the divesting of the title of Miss McKeown, but only the procuring of the possession of the described property to be held and used by the defendant as her agent, leaving the title still in Miss McKeown. Consequently the verdict of the jury upon these counts is not inconsistent with their verdict upon the counts charging embezzlement.

The motion is overruled.

WENDELL P. STAFFORD.

Opinion of Court Upon Motion in Arrest of Judgment.

Filed July 15, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 26689. Criminal Docket.

UNITED STATES
vs.
JOHN C. DAVIS.

The defendant moves in arrest of judgment for that the verdict is double, in that it finds the defendant guilty on the tenth
37 counts in respect of the same subjects matter set forth in the preceding nine counts, or some of them. It is a sufficient answer to this motion to say that there is nothing upon the record to substantiate this statement that the tenth count is in respect of the same subjects matter set forth in the preceding nine counts.

Accordingly the motion is overruled.

WENDELL P. STAFFORD, *Justice.*

Opinion of Court Upon Motion for New Trial.

Filed July 15, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 26690. Criminal Docket.

UNITED STATES
vs.
JOHN C. DAVIS.

In support of this motion the defendant relies upon the same matter set forth in the motion in arrest of judgment, namely, that the verdict of the jury is double in finding the defendant guilty on the tenth count for embezzling the same moneys and property of which he was found guilty on the first nine counts, or some of them. But if this be true, there is no occasion for granting a new trial, the proper course being to render judgment and impose sentence upon the other nine counts, or some of them.

Accordingly the motion will be overruled.

WENDELL P. STAFFORD, *Justice.*

38 Supreme Court of the District of Columbia.

FRIDAY, *July 15th, A. D.* 1910.

The Court resumes its session pursuant to adjournment, Mr. Justice Stafford presiding.

No. 26689.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for False Pretenses and Embezzlement.

Come as well the Attorney of the United States as the defendant in proper person in custody of the warden of the United States jail, in and for the District of Columbia and by his attorney Henry E. Davis, Esquire; whereupon it is considered by the Court that the defendant's motion in arrest of judgment in indictment No. 26689, heretofore argued and submitted, be and hereby is granted as to the first and second counts of said indictment No. 26689, and judgment is accordingly arrested as to the said first and second counts of the said indictment; but the said motion in arrest of judgment is overruled as to the third (3rd), fourth (4th), fifth (5th), sixth (6th), seventh and eighth (8th), counts of the said indictment; and thereupon it is considered by the Court that the defendant's motion for a new trial in indictment No. 26689, heretofore argued and submitted, be and the same is hereby overruled; whereupon the defendant by his attorney notes an exception to the ruling of the Court as to the said motion in arrest of judgment and the said motion for a new trial;
39 and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that for his said offense as set forth in the third (3rd), fourth (4th), fifth (5th), sixth (6th), seventh (7th) and eighth (8th) counts of the said indictment, the defendant be taken by the warden aforesaid to the jail aforesaid, whence he came, thence to the Penitentiary (as designated by the Attorney General of the United States) there to be imprisoned for the period of eight (8) years, to take effect from the date of the arrival of said defendant at said Pentitentiary; whereupon the defendant by his attorney notes an exception to the sentence of the defendant as imposed by the Court; and thereupon the said defendant by his attorney, notes an appeal to the Court of Appeals from the judgment of the Court in this case; and thereupon, upon motion of the Attorney of the United States the Court fixes the amount of the Bond on Appeal in this case at ten thousand dollars ($10000.) and the Bond for costs at one hundred dollars ($100.) or a deposit of fifty dollars ($50.) cash in lieu thereof; whereupon, upon motion of the Attorney for the defendant, it is ordered by the Court that the time for filing

the Bill of Exceptions and Transcript of Record be and is hereby extended to and including October 6th, 1910.

No. 26690.

UNITED STATES
vs.
JOHN C. DAVIS.

Indicted for Embezzlement.

Come as well the Attorney of the United States as the de-
40 fendant in proper person in custody of the warden of the United States jail in and for the District of Columbia and by his attorney Henry E. Davis Esquire; whereupon it is considered by the Court that the defendant's motion in arrest of judgment in indictment No. 26690 heretofore argued and submitted, be and hereby is overruled; and thereupon it is considered by the Court that the defendant's motion for a new trial in the said indictment No. 26690, heretofore argued and submitted, be and the same hereby is overruled; whereupon the defendant by his attorney notes an exception to the ruling of the Court as to the said motion in arrest of judgment and the said motion for a new trial; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that for his offense as set forth in the first (1st), second (2nd), third (3rd), fourth (4th), fifth (5th), sixth (6th), seventh (7th), eighth (8th) and ninth (9th) counts of said indictment No. 26690, the said defendant be taken by the warden aforesaid to the jail aforesaid, whence he came, thence to the Penitentiary, (as designated by the Attorney General of the United States) there to be imprisoned for the period of eight (8) years, said imprisonment to take effect from and including the date of the expiration of the sentence pronounced in indictment No. 26689, whereupon the defendant by his attorney notes an exception to the sentence of the defendant as imposed by the Court; and thereupon the said defendant by his attorney
41 notes an appeal to the Court of Appeals from the judgment of the Court in this case; and thereupon upon motion of the Attorney of the United States the Court fixes the amount of the Bond on appeal in this case at ten thousand dollars and the bond for costs at one hundred dollars or a deposit of fifty dollars cash, in lieu thereof; whereupon upon motion of the Attorney for the defendant, it is ordered by the Court, that the time for filing the Bill of Exceptions and Transcript of Record be and hereby is extended to and including October 6th, 1910.

Memorandum.

August 2, 1910.—Bonds on appeal in Causes Numbered 26689 and 26690, filed.

Supreme Court of the District of Columbia.

WEDNESDAY, *October 5th, A. D.* 1910.

The Court resumes its session pursuant to adjournment, Mr. Chief Justice Clabaugh presiding.

* * * * * * *

No-. 26689 and 26690.

UNITED STATES
vs.
JOHN C. DAVIS.

Indictment for Embezzlement.

Come as well the Attorney of the United States as the defendant by his attorney Henry E. Davis, Esquire; whereupon the defend-
42 ant by his attorney prays the Court to sign and make a part of the record his Bill of exceptions in this case heretofore submitted on September 23rd, 1910, which is accordingly done, nunc pro tunc.

Bill of Exceptions.

Filed October 5, 1910.

In the Supreme Court of the District of Columbia.

Criminal Nos. 26689 and 26690.

THE UNITED STATES OF AMERICA
vs.
JOHN C. DAVIS, Defendant.

At the trial of the above entitled causes, which were consolidated and tried together, the said United States, hereinafter, for convenience, designated "Government," to support the issues on its part joined, offered and gave evidence tending to show as follows:

On March 3rd and March 6th, 1909, the defendant made to the certain Nellie McKeown, in indictment No. 26689 mentioned, the representations set forth in the first and second counts of said indictment, and thereby induced her to give to him, the said defendant, certain checks in said counts of said indictment described, and which said checks were given to and received by said defendant upon the express condition that they should be used in the purchase of lumber for the certain Owen, in the enterprise described in said counts of said indictment. Said checks were made out
43 by said McKeown to the payees therein named, upon the request and direction of said defendant, who represented that said payees were the persons from whom lumber for said Owen was

to be purchased. Said checks were four in number: one dated March 3, 1909, for $500., payable to the order of one W. E. Sisson; another dated March 6, 1909, for $100., payable to the order of one Wade Atkinson; another dated March 6, 1909, for $400., payable to the order of one E. Hilton Jackson; and another dated March 6, 1909, for $100., payable to the order of said Sisson. The certain statements and representations upon which said checks were so procured by said defendant were false; no lumber was purchased by the defendant from the payees mentioned in said checks, or any of them, for the said building operations of said Owen, or for any purpose whatever; but said checks were used by defendant in transactions respectively with the several payees therein named, and for the personal use and benefit of said defendant in said transactions. Each of said checks was duly honored by the bank upon which drawn, and charged to the account of said McKeown. After receiving said checks, defendant falsely reported to said McKeown that lumber had been purchased therewith from the payees thereof, and that said lumber had been used by said Owen in said enterprise.

On the days and each of them in the first nine counts of indictment No. 26690 mentioned, the defendant received from said Wilkins, therein named, the several sums of money in said nine counts respectively set forth, which sums and each of them were delivered to the defendant by said Wilkins, to be loaned for the benefit
44 and interest of said Wilkins, and defendant received the same from said Wilkins for that purpose. Defendant, from time to time, reported to Wilkins the investment by him of said funds, and delivered to Wilkins certain promissory notes represented by defendant to have been made to certain contractors and builders in Washington, namely, Thomas A. Owen, B. F. Wolf, and E. M. Austin, to each of whom defendant had loaned said money of said Wilkins. From time to time, defendant also paid Wilkins various sums which he represented to Wilkins as interest and profits on said alleged investments. From time to time, defendant also rendered to Wilkins what purported to be statements relative to the investment of Wilkins' funds. On April 25, 1908, defendant represented to Wilkins that he had combined all of Wilkins' money into one loan to the said E. M. Austin, and delivered a promissory note for that sum to Wilkins, bearing signature "E. M. Austin." The moneys so delivered to defendant by Wilkins were never repaid, although demand for settlement was often made. Defendant had never loaned any of said moneys to said Owen, Wolfe, or Austin, nor were said Owen, Wolfe or Austin ever contractors and builders in Washington or elsewhere. All the foregoing matters and things occurred and were done in the District of Columbia.

And there the Government rested.

And thereupon the defendant, to maintain the issues on his part joined, offered and gave in evidence a record of the Criminal Court of New Hanover County, State of North Carolina, showing
45 that at the March Term, 1892, of the said Court in the case of the said State against the said defendant, pending in the said Court, upon the issue, "Is the defendant now insane," the said

issue was answered by the jury, duly impaneled and in attendance upon the said Court, "Yes," and that thereupon the following judgment of the said Court was rendered on the 26th day of April, 1892:

"This action coming on to be heard at this term of the Superior Court of New Hanover County and it being suggested to the Court that the defendant is insane and the issue as to whether the defendant John C. Davis is now insane having been submitted to a jury empaneled and the said jury having returned for their verdict that the said defendant is now insane and the Court being satisfied by the verdict of the said jury of inquisition that the said defendant John C. Davis is now insane, it is ordered that he be committed to the North Carolina Insane Asylum at Raleigh by the Sheriff of New Hanover County and there be detained until he is restored to sanity when the same shall be certified to the Solicitor of the proper District in order that proper steps be taken to secure the appearance of the said defendant to answer the original indictment in this action."

Upon and after the rendition of said judgment, the defendant was committed to and received at said insane Asylum, and there remained until early in the year 1907, at which time, when he was about to be discharged from said asylum, the defendant escaped therefrom and was never thereafter returned.

And thereupon the defendant offered and gave evidence tending to show that at the time of his reception at said asylum, and while he was so confined therein, he was of unsound mind. Among such evidence was that of one Julius A. Faison, who, from August, 1894, to May, 1897, was Assistant Superintendent of said asylum, during which period he came in frequent contact with said defendant, and from his observation and knowledge of said defendant during
46 said period, it was his opinion that said defendant was then of unsound mind, suffering from a form of insanity known as paranoia.

And thereupon defendant offered and gave further evidence tending to show that at the time of the commission of the offenses in said indictment mentioned, and at the time of the trial said defendant was of unsound mind.

And there the defendant rested.

And thereupon the Government offered and gave in rebuttal evidence tending to show that during the whole period said defendant was so confined in said asylum, and at the time and times of the commission by him of the offenses in said indictment mentioned, and at the time of the trial he was not insane in any manner or from any cause, but was of sound mind.

And there the Government rested.

And thereupon the defendant, by his attorney, requested the Court to grant the following instructions to the jury and to instruct the jury accordingly:

I.

In order to find the defendant guilty on any one of the first six counts of the indictment No. 26,689, you must find from the evi-

dence that the checks respectively set forth in the said counts were of value, as in and by the said counts respectively alleged.

II.

In order to find the defendant guilty on either of the third, fourth, fifth or sixth counts of the said indictment, you must
47 find from the evidence that the defendant received as the attorney or agent of the certain Nellie McKeown the checks respectively set forth and described in the said counts respectively.

III.

Upon the evidence you may not find the defendant guilty upon either the seventh or eighth counts of the said indictment.

IV.

If you find the defendant guilty upon the first three counts, or any of them, of the said indictment, you may not find him guilty on any other of the counts thereof relating to the subject-matter of such first three counts respectively.

V.

As there is no evidence before you that the defendant either received or had in his possession, in the District of Columbia, any of the moneys mentioned and described in the several counts of the indictment No. 26,690, you may not find the defendant guilty on any of the said counts.

VI.

It being established by the record of the North Carolina Court produced in evidence that the defendant was adjudged insane in the year 1892, you are instructed that the presumption of the law is that he is still insane, and you should so find, unless you find from
48 the evidence beyond any reasonable doubt that he has been restored to sanity; and the burden of proof is upon the Government to show to your satisfaction beyond such reasonable doubt that he has been so restored.

VII.

In order to find the defendant guilty of the offense charged in any one of the counts of the indictment No. 26,690, you must find from the evidence that the money or property in such count mentioned and described was in the possession of the defendant, in the District of Columbia, as the agent or attorney of the certain Wilkins in the said indictment named and that he, the defendant, converted the same to his own use and embezzled the same in the District of Columbia.

VIII.

The burden of proof is upon the Government to establish to your satisfaction beyond any reasonable doubt every essential to the guilt of the defendant, including the fact of his sanity at the time of the alleged commission by him of the offenses charged in the indictments.

IX.

If you find from the evidence that the defendant was adjudged insane in the year 1892 and that such adjudication has not been reversed or set aside, you are instructed that such fact raises the presumption that the defendant was insane at the time of the alleged commission by him of the offenses charged in the indict-
49 ments, and that the burden is on the Government to overcome such presumption by establishing to your satisfaction, beyond any reasonable doubt that at the time of the said alleged offenses the defendant had been restored to sanity and was then sane.

Of the said requested instructions the Court granted and gave to the jury those numbered I, II, VII and VIII, and refused and declined to give to the jury those numbered IV, V, VI, and IX; and the seventh and eight- counts of said indictment No. 26,689, to which the said requested instruction numbered III referred, were withdrawn from the consideration of the jury.

To the refusal of the Court to grant and give to the jury the said requested instructions numbered IV, V, VI and IX, the defendant, by his attorney, in each instance duly excepted, and the Court entered the same in his minutes.

And thereupon counsel for the Government and the defendant respectively addressed the jury, and thereupon the Court instructed the jury as follows:

"Gentlemen of the jury, counsel for the defendant has argued only one question in this case, namely, the question of insanity. He has stated to you that, in his opinion, there is no other question upon the evidence; but that does not relieve you, nor does it relieve the court, of the duty of considering what the crime is that is charged against the defendant in each of these counts. It does not relieve you of the duty of determining whether the crime is made out in all its essentials, beyond a reasonable doubt. And, indeed, notwithstanding the statement that counsel made to you, he has re-
50 quested the Court to charge you upon these questions, as well as upon the question of insanity, so that your duty and my duty is not at all changed by the course of the argument.

We will take up first the McKeown indictment. I will call your attention quite particularly to the first count, as an example of the other counts. This charges that on the 3d day of March, 1909, in this District, the defendant unlawfully knowingly, designedly and with intent to defraud, did falsely pretend and represent to Ella McKeown that a certain Thomas A. Owen was then engaged in the business of contracting and building in the City of Washington, and that in the conduct of that business Owen was then contracting for an apartment house in this city, and that for the purpose of constructing it a large quantity of lumber was needed by Owen; that this lumber could then be purchased by Owen in Virginia at a much lower price than in the District, but that to obtain it in that way it was necessary that he should pay cash for it; that Owen

was desirous of so purchasing the lumber in Virginia, to be used in the construction of said apartment house and that Owen had, before that time, entered into a contract with him, Davis, that he, Davis, would procure the money necessary to purchase the lumber in the manner and for the purpose aforesaid; that by reason of the low price at which the lumber was to be purchased, as well as by reason of the terms of said contract, persons who would invest money with him, Davis, for the purpose of purchasing lumber in this manner would receive large profits on the investment.

Then the count goes on to say that by these false pretenses
51 and representations Davis did then and there unlawfully, knowingly, designedly and with intent to defraud, obtain from her, Miss McKeown, a certain instrument of writing in the form of a bank check. Then it sets out a copy of the check payable to the order of W. E. Cissell for $500 and signed by Miss McKeown. The count then goes on to say that this instrument of writing was then and there the property of Miss McKeown and that she, relying on these false pretenses and representations, and believing that they were true, and being deceived thereby, delivered the check to Davis. Then it goes on to state, as the law requires, positively and explicitly that in truth and in fact these representations that he made to her were each one of them false. It states each thing in detail, that Owen was not at that time engaged in the business of contracting and building, and so on with reference to these various representations upon the strength of which, it is alleged that he obtained the check.

That is the substance of the first of these counts. The second one is just like it except that it varies in the description of the check. There were three checks counted upon in the second count, the one for a thousand dollars payable to the order of W. A. Adkins, one for $400 payable to the order of E. Hilton Jackson, a witness who appeared before you, and another for $100 payable to the order of W. E. Cissell. In other respects the allegations in that count are like those in the first count.

You will have these indictments before you and you can refer to these various counts; but it may make it somewhat easier
52 for you if I analyze them briefly in this way.

When we come to the third count, we come to another form of a charge to which I must call your attention. This is a charge that Davis, on the 3d day of March, 1909, here in the District, was the agent and attorney for Miss McKeown, and on that day had in his possession this instrument in writing, namely this check of $500 payable to W. E. Cissell and that it then belonged to Miss McKeown; that it had come into his possession by virtue of his said employment and was, on that day, in his possession here in the District at that time as her agent and attorney and he wrongfully converted it to his own use and secreted the same with intent to convert the same to his own use, and thereby embezzled it.

The fourth count is another charge of embezzlement of the Atkinson check for $1,000 and the fifth count is a charge of em-

bezzlement of the Hilton check for $400. The sixth count is a charge of embezzlement of the Cissel check for $100.

So that the first and second counts are for obtaining these checks by false pretenses, in the first place, and the other four are for converting them to his own use, embezzling them, while he had them in his possession as the property of Miss McKeown. The seventh and eight- counts you will not consider, as they are withdrawn.

It is necessary for you to be convinced, beyond a reasonable doubt, as to every one of the matters of fact charged in any one of these counts before you can convict the defendant upon that
53 count. All of these matters which I call to your attention as being charged in these counts are essential to be proved, and you must be satisfied beyond a reasonable doubt that those matters are true as alleged there, before you can convict him.

So you will take these indictments and go over these counts, and in your deliberations on the testimony, as you recall it, you will ask yourselves whether you are satisfied, beyond a reasonable doubt, that each one of these allegations has been met.

That will require you to find as to this indictment I have called your attention to, the McKeown indictment, that these checks were of the value set forth. They are alleged to have been of a certain amount of a certain value, and you will have to find that established. You have the evidence upon the subject. You have the evidence of Miss McKeown about it and you have the letters of Mr. Davis to Miss McKeown about the transaction and what he did with the money. There is evidence from which, if it satisfies your minds, you would have a right to find that the checks were of the value alleged; but it is a question of fact for you, like all other questions of fact in the case.

As to the third, fourth, fifth and sixth counts, the embezzlement counts, it is also necessary for you to find that Davis was the attorney or agent of Miss McKeown and held these checks as her attorney or agent. There is evidence tending to show that he did; but that is one of the facts that you would need to find, beyond a reasonable doubt.

Now, turn for a moment to the Wilkins indictment. Let us take the first count there as a sample. It charges that Davis, on
54 the 15th day of July, 1907, at the District of Columbia was the agent or attorney of Robert Lee Wilkins and on that day, here in the District, he had in his possession or under his care $1500 in money of the value of $1500 of the money or property of Wilkins and that it came into his possession or under his care by virtue of this employment; that so having it, he, as attorney or agent of Wilkins, wrongfully converted it to his own use and wrongfully took, made away with, and secreted the same with intent to convert the same to his own use. It would be enough if you found either of these last two allegations, either that he made way with it or secreted it with intent to convert it, or that he did actually convert it. It is alleged that he did both, but either one would constitute a conversion, so far as the act of converting is concerned, and that would be sufficient.

There are ten counts in all, and the other counts are like the first count, except that they apply to different sums and different dates. The doctor testified about them on the stand before you, from his memoranda. He testified as to when he let him have moneys and the sums of money and so forth. I think there is evidence before you tending to support these allegations. If you find them made out beyond a reasonable doubt, so far as that part of the case is concerned, you would be justified in convicting the defendant.

The other question is whether, if he did these things and did them with the intent charged, he is responsible for them, that is whether he was then of sound mind. The legal test of sanity
55 is whether a man knows what he is doing, then whether he knows the moral quality of the act. In other words whether it is right or wrong; and, thirdly, whether there is any disease of the mind that has deprived him of the will power to do what he knows he ought to do or to refrain from doing what he knows he ought not to do. If he did not know what he was doing by reason of mental disease, of course he is not responsible. That is common sense and that is law. If, notwithstanding, he knew what he was doing, yet by reason of mental disease he did not know that it was wrong to do it, then he is not responsible either in common sense or in law. If, by reason of mental disease, although he knew what he was doing and knew it was wrong to do it, he could not help doing it, then he is not responsible. It is a question of fact for you to determine whether he was in that condition of mind, either that he did not know what he was doing or that he did not know it was wrong or he could not help doing it by reason of mental disease. That is all there is to this question of insanity.

You see, in order to determine that question, it is of the utmost importance for you to consider just what it was he did. There has been very little discussion of that question, as compared with all that has been said in this case. What was it this man did, if you find that he did the things charged? Did he get this money into his possession by lying about it, by representing that this man Owen was a contractor and builder here, not intending to use the money in that way at all but intending to use it for his own purposes, and get possession of it in that way? So far as he is charged with
56 doing that, is it true? That is, did he have a delusion about it or did he really believe that Owen was a contractor and builder here? Was he crazy on that subject? Take the evidence bearing on the subject. It has not been talked about very much. The general discussion has been about his being insane; but it has not been put to you squarely in that way—that he was insane in that sense, that he had a delusion and actually believed these things that he told to the parties? On the evidence, is there any reasonable doubt on that subject? Did he labor under the delusion that Owen was this sort of a man and that he was getting this lumber in Virginia and that these great profits could be made out of it, or was that merely a lie and did he know he was lying and was doing so for the sake of getting this money into his hands?

If he was crazy on the subject, if he was of unsound mind and

that was the form of insanity, and he really believed these things because he was insane, of course he would not be responsible for them and his act then would be the act of an unsound mind.

Merely as an illustration, whatever the form of his insanity, if he was insane when he did these things and the act was the product of that insanity, of course he was not responsible. Do you find any connection between any insanity that he evidences and what he did? Does it appear to you that he was insane when he did these things and these acts are the product of an unsound mind.

I am speaking now of the transactions themselves. You will go over them in your minds and when you come to consider
57 them you will consider how much intellectual power they indicate and how much cunning they indicate, if any. You will consider whether it is true that he got these young women to sign notes when they supposed they were signing receipts and then used them with other people from whom he borrowed money to represent their investments, working the thing back and forth in that way. It is for you to say what that indicates with reference to whether he was of sound or unsound mind. That is only an illustration. That is true of all these transactions. Treating the transactions in themselves, what do they indicate as to his soundness of mind or want of soundness of mind?

In any criminal case in this jurisdiction, when the question of sanity is fairly raised, as it is here, it is the duty of the Government to satisfy you beyond a reasonable doubt that the defendant is of sound mind, that is, that he was of sound mind at the time he did the things complained of. It is just as much the duty of the Government to convince you that he was of sound mind when he did the things complained of, as it is to convince you that he did them. If you have any reasonable doubt about his having been of sound mind at the time, it is just as much your duty to acquit him as it would be if you had any reasonable doubt about whether he did them.

You have a great mass of testimony before you on this question of sanity. You have the testimony of lay witnesses who saw him and noticed the things he did, and they have described them to you as well as they could and have then added their opinions as to
58 whether he was of sound mind or not. Then you have the testimony of experts who only saw him and examined him for the purpose of deciding whether he was really sane or not.

You are the judges of the testimony of all these witnesses. It is for you to say how much weight you will give the testimony of any one of them. It is not for counsel to say. It is not for the Court to say; but it is for you to say. You ought not to be too much influenced by any opinions of counsel expressed about witnesses. Your own judgment as to the credibility of a witness is much better than that of a counsel. Counsel may have prejudices or some bias in the matter; some zeal; but you have not. You have heard the witnesses and listened to them impartially, and it is safer for you to trust the impression they have made upon you than it is to be very much influenced by what counsel say to you as to the impression the witnesses

made upon them. All that counsel say to you is to be carefully weighed and considered, and if it appeals to your common sense it ought to have that effect upon your mind, but you are the judges of those impressions, and you had better trust your own impressions about it.

Now, with regard to the impression which witnesses make upon your minds. Of course you have a great deal of information and testimony here that some of the witnesses who saw him do things did not have. You are to remember that. You have had the life of the man spread out before you here.

Let us run over that testimony for a moment. To begin with, it appears that he was charged with about the same sort of of-
59 fenses that he is charged with here, down in North Carolina back in 1892. There, instead of going to trial as he has here, a preliminary question was raised as to whether he was sane at the time, so that he could be tried. That is a course that may be taken. The courts may be appealed to to say whether he is sane now and ought to be tried at all, and then a jury may be impaneled and that question tried before the case itself is ever tried. That is what they did there. Here, the case itself is being tried and it will be for you to say, on the evidence, whether or not he is guilty by reason of insanity, and if you find that he is insane that you return a verdict in the form of "Not guilty by reason of insanity." In North Carolina the other course was taken and it was found that he was of unsound mind. There is nothing in the record of that judgment to show what the form of his insanity was, or whether it was of a permanent or temporary character, so that the judgment itself does not enlighten us. We have got to find out, as best we can, from the testimony here, as to his condition. But you are bound, I think, to take it as a fact, because it was so adjudged and I give you that as the law, that he was insane at the time of that adjudication; but that does not amount to a finding that he had any permanent type of insanity—only that he was then insane.

What is the evidence after that. It seems that he was for five years in the hospital for the insane in North Carolina. You have heard the testimony of Dr. Faison and others. One said that he appeared to have a delusion of some sort and the testimony
60 of the others was that he was perfectly normal. I will not go over it. You will recall that testimony.

It seems that he was sent to be kept until he was restored to sanity, when he was to be brought back and tried, so that if he had been formally discharged, apparently, he would have gone back to be tried. It appears that he never was formally discharged, but instead of that he took French leave. There is nothing in the evidence, directly, to show why that occurred. From all of the testimony in the case, it will be a question of fact for you, if it is material at all, whether he left because he preferred to leave in that way, rather than to have to go back and be tried, without being formally discharged, or whether he left because he was still insane and anxious to get out and simply obeyed the impulse to go. It seems that he was just about to be discharged and his clothes were gotten ready and yet, without waiting

for a formal discharge, he goes. We do not know where he was between that time and the time he appeared here. The date when he appeared in Washington is not exactly fixed. It seems that he left the hospital down there in 1897, and some two or three years afterwards we find him here; but how long he had been here we do not know.

If you find from all the testimony that the type of insanity he had down there was permanent in its character, then the presumption of continuation attaches, and it would be like any other piece of evidence; it would have to be removed by proof. It would be presumed that he continued to be insane, until the evidence satisfies you, beyond a reasonable doubt, that he had been restored to sanity. You
61 may find from the evidence that he was restored very soon afterwards, if you believe the testimony of some of the witnesses as to his conduct and appearance in the North Carolina hospital. You may believe, notwithstanding the adjudication, that after that he was all right, and that he was all right most of the time he was there in the hospital. It is all a question of fact for you. What I want to make plain to you is that you are not absolutely bound by that adjudication. If all the evidence in the case, taken together, convinces you that whatever might have been his condition at the time of the adjudication, although he may have been insane then, he has been sane since and was sane at the time he did the things in question here—if the evidence satisfies you of that beyond a reasonable doubt, then the adjudication in North Carolina need not stand in your way.

What is the fact about that? You have seen the man here in court. You have observed his attitude and you know how much of the time you have been able to see his face. You have doubtless watched his expression and you have your own judgments as to his appearance. You have heard the testimony of the witnesses on the subject. These expert witnesses are merely advisers. Their opinions do not bind you at all. It is for you to say how much weight you will give to their testimony, just the same as it is for you to say how much weight you will give to the testimony of the other witnesses. Of course, taken altogether, they represent a great many years of dealing with a great many cases of insanity. Take Dr. White and Dr. Jelliffe and Dr. Brush together, and put their
62 years of service and the number of cases they have had under observation together, and of course it would cover a very great length of time and a great number of cases.

If you had some case of your own, with reference to some question that arises in your own family or among your own friends, and you felt that you could not tell whether a given person was insane or not, would you think it worth while to have the advice of three such men as those, on that subject, if they had no interest in the matter at all? If they all agreed in their opinion in regard to the matter, would it be of some weight to you, in your own affairs, where you wanted to be informed? It is just the same here in court. They are called in because they are supposed to have had more experience and to know more about it than ordinary men. They tell you what they

think about it and present their views to you; but you are not obliged to give them any more weight than you think they are entitled to. All of them say that this man is undoubtedly shamming and have given you the reasons, in detail, why they think so and why they have no doubt about it.

Of course if that is true, you do not want to be fooled. No jury wants to be fooled and no judge wants to be fooled. It is your duty to ascertain the fact. You are to consider not their testimony alone but all of the testimony in the case, every bit of it, and to keep it all in mind, and when you have it all in mind, if it satisfies you beyond a reasonable doubt that he was a man of sound mind when he did these things, that is if he knew what he was doing and that it
63 was wrong to do it and he could have done otherwise if he wanted to, then he was of sound mind and you should find him guilty.

If you have any reasonable doubt about any of these propositions, you should acquit him.

I am asked to call your attention to the fact that he is charged with a crime committed in the District of Columbia. It is necessary that you should find, by the testimony, that the crime was committed here in the District of Columbia, in order for you to convict the defendant. That is, it is necessary that he should have obtained this money by false pretenses here and not somewhere else, and that in the cases of embezzlement that he should have been acting as the agent of the party, Mr. Wilkins in this case and Miss McKeown, in the District and embezzled the money here and not somewhere else. It would make no difference if the money was turned over to him in Alexandria and he came here with it, or if it was turned over to his agent and his agent brought it here and he embezzled it.

But the crime is charged to have been committed here, and you have the evidence before you. I hold, as matter of law, that there is evidence before you tending to show that the embezzlement occurred here. If it satisfies you beyond a reasonable doubt that it did occur here, then you have the right to convict him; otherwise not."

To which charge of the Court on the said question of insanity the defendant, by his attorney, then and there excepted and the Court noted the same in its minutes.

All the foregoing proceedings were had before the jury retired to consider of its verdict.

64 And the defendant requests the Court to sign this, his bill of exceptions, to have the same force and effect as to each of the said exceptions, as though each of the same was severally set forth in a separate bill of exceptions, which is granted. And the Court accordingly signs this, the defendant's bill of exceptions. to have the force and effect aforesaid, now for then, this 5th day of October, A. D. 1910.

WENDELL P. STAFFORD, *Justice.*

Memorandum.

October 6, 1910.—Time in which to file Transcript of Record in Court of Appeals, in Causes Numbered 26689 and 26690, further extended to November 7, 1910, inclusive.

Appellant's Designation for Transcript of Record.

Filed October 7, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal Nos. 26689 and 26690.

UNITED STATES
v.
JOHN C. DAVIS.

To the Clerk of said Court:

I hereby designate, for the transcript of record on the
65 appeal in the above-entitled causes consolidated, the following:

1. Indictment in No. 26689.
2. Plea to said indictment.
3. Indictment in No. 26690.
4. Plea to said indictment.
5. Order granting motion to consolidate the said causes.
6. Verdict.
7. Motion for new trial.
8. Motion in arrest of judgment.
9. Orders on said motions.
10. The judgment and sentence.
11. Exception to judgment and sentence.
12. Memorandum of bond on appeal.
13. Bill of exceptions.
14. This designation.

HENRY E. DAVIS,
Attorney for Defendant.

Service of copy of the foregoing acknowledged this 7th day of October, 1910.

CLARENCE R. WILSON,
Attorney for the United States.

66 *Appellee's Designation for Transcript of Record.*

Filed October 10, 1910.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal Nos. 26689 and 26690.

UNITED STATES
v.
JOHN C. DAVIS.

To the Clerk of said Court:

As supplemental to the designation of record herein filed by the defendant, I hereby designate the following for the transcript of record on appeal in the above entitled cases consolidated:

1. Motions for new trial in each case.
2. Motions in arrest of judgment in each case.
3. Opinions of Court in each case on orders overruling motions for new trial and in arrest of judgment.

CLARENCE R. WILSON,
Attorney of the United States in and for the District of Columbia.

67 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 66, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in causes numbered 26689 and 26690, Criminal, (Consolidated), entitled United States vs. John C. Davis, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 4th day of November, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2246. John C. Davis, appellant, vs. United States. Court of Appeals, District of Columbia. Filed Nov. 7, 1910. Henry W. Hodges, Clerk.